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N A M A P U B L I S H E S A S T A N D A R D S C H E M E  
M A N A G E M E N T A G R E E M E N T

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INSIDE THIS  
ISSUE:

NAMA Publishers a Standard Management Agreement	1
Estate Agents Still Need To up their Game	1
Back to Basics	3
Survival Manual Review	4
Q & A with the Professor	7



By Greer Moore—Barnes

As part of its ongoing aim to provide facilities to its Members that give value to their Membership, the National Association of Managing Agents (NAMA) indentified the need for a Management Agreement that would do exactly that.

Not only does the newly released NAMA Management

Agreement cover very comprehensively all the requirements of the Sectional Titles Act, and other related Statutory regulations, it also identifies those entitled to use this Agreement as Members of this National Association: An Association whose reputation is well-respected, and which now plays a major role in decision making in the Sectional Title industry; with obvious “spin-off” benefits for its Members.

The drafting of the NAMA Management Agreement remained a “work in progress” for what - to some eager Members - appeared an interminable period. However, the NAMA Board of Directors was determined that

the final product, when released, should have been put through every possible checking process; to achieve this they consulted with a number of “legal eagles”, drawing not only on Sectional Title expertise but also experience in the drafting of contractual documentation. The “final draft” was thoroughly scrutinized at the Board’s meeting in April this year, with a major part of the 2-day agenda being devoted to ensuring that every last “t” had been crossed and every “i” dotted.

Having satisfied themselves that the sub-committee tasked with the drafting had fulfilled the mandate given to them, the NAMA Directors, ...to page 2

E S T A T E A G E N T S S T I L L N E E D T O U P  
T H E I R G A M E



Jennifer Paddock

With the introduction of the FET Certificate in Real Estate, which is registered at an NQF level 4, estate agents throughout South Africa need to up their game. All estate agents will be required to obtain the FET Certificate in Real Estate by 2010 if they want to continue

to be eligible to obtain a Fidelity Fund Certificate.

In the past, an estate agent has been able to qualify as such by working as a candidate estate agent under a principal estate agent for a period of one year. After twelve months and with-

out passing the Estate Agency Affairs Board examination, this candidate agent was able to work as a principal estate agent and even open his or her own estate agency.

The advent of the FET Certificate in Real ...to page 2

**N A M A P U B L I S H E S A S T A N D A R D S C H E M E  
M A N A G E M E N T A G R E E M E N T  
... c o n t i n u e d**

...from page 1 in circulating the Agreement to its Members early in July, informed them that while their comments on the Agreement would be welcomed, these should pertain only to the legality of the document.

The main body of the Agreement, which includes menu type Annexures, has been issued in a format which ensures that any amendment thereto must be identifiable, and must be acknowledged by all parties; as with any contractual

document. This, therefore, protects the originality of the Agreement. The Annexures, however, have been issued in a format which allows them to be tailored to suit the needs of individual Agents / Schemes thus making the Agreement a broad based user friendly contract.

NAMA has invited all its Members to make use of this Agreement: They are confident that through the setting of ethical standards, by ensuring total

transparency and a parity in respect of services offered, an awareness of professionalism will be engendered.

Professor Graham Paddock has advised that the NAMA Management Agreement will be included in the courseware for the Paddocks / UCT Sectional Title Scheme Management Course; the Directors thank him for his recognition, of this newly released Agreement as an essential part of the documentation included in the successful and well-acclaimed Certification of students in the industry. ■

**E S T A T E A G E N T S S T I L L N E E D T O U P T H E I R G A M E  
... c o n t i n u e d**

...from page 1 Estate will not allow candidate agents to become principal agents in this manner and is bound to raise the standards of professionalism within the industry. Buyers and sellers will become accustomed to a higher standard of knowledge on the part of their estate agents and therefore agents will have to fight harder to keep themselves a cut above the rest.

For estate agents, selling property in the current and future property markets is no easy feat. With interest rates heading skyward and buyers becoming more and more astute, the pressure is on for good estate agents to differentiate themselves from the so-called 'rats and mice' in the industry. The competitive advantage necessary to achieve this comes in the form of education. Of course every estate agent will have to pass the FET Certificate - but this basic training will not stand out as extraordinary in light of the fact that every other

estate agent will also have it.

An important area in which many estate agents are under-qualified is the area of sectional title property sales. These sales differ tremendously from sales of conventional property in many ways and an estate agent with a certification in sectional title property sales can handle these sales in a more professional and efficient manner than non-certified estate agents. There is no better time to get ahead of the pack. Knowledge is power and estate agents can empower themselves in their business through further education.

The University of Cape Town's Sectional Title Specialist Realtor Certificate Course, presented in conjunction with Paddocks, has proven to be extremely popular in the real estate industry. This is a part-time course, is ideal for full-time employees and is presented nationally. Should you be interested in

receiving a University certification in sectional title sales, please contact Christina on 021 674 7818 or [chistina@paddocks.co.za](mailto:chistina@paddocks.co.za). Alternatively, visit [www.paddocks.co.za](http://www.paddocks.co.za). ■



**B A C K T O B A S I C S**  
**B Y J U D I T H V A N D E R W A L T**

## Taking Action Against the Developer



**Judith van der Walt**

In new sectional title developments, the first purchasers of apartments in the building usually buy their properties “off-plan” from the developer, as the actual buildings are not yet in existence at the time the apartments are sold.

Developers have perfected the art of marketing a new scheme using models, glossy advertising brochures and detailed plans to convince prospective purchasers that the actual buildings will be as impressive as those described. There is no problem with these marketing and sales techniques, provided that the property that it being sold is adequately defined in the contract of sale and what is ultimately built is what has been marketed.

The actual problems with buying “off-plan” usually only manifest a year or two after the buildings have been completed and start to show signs of deterioration. As the buildings settle into the ground, cracks start to appear in the walls, plaster starts to fall off balconies and paint starts to peel. Inadequately sealed roof/patios start to leak and balcony railings start to

rust. The foundations may prove to be inadequate and can actually subside into the ground. If the foundation movements are substantial, the building may become structurally unsound and dangerous. Substantial damp problems may make residential sections unfit for habitation. On a smaller scale, electronic security gates on the common property may repeatedly fail and the promise of “around the clock security guards” may remain just a promise, never to be fulfilled.

Is there any relief available to a body corporate in these circumstances? What relief is there for individual owners? Can they take a developer to task in the courts for failing to deliver as promised?

The Sectional Titles Act of 1986 (‘the Act’) provides that the body corporate may sue the developer, but provides that the members of the body corporate must first approve such action by way of a special resolution. So this decision cannot be made unless the proposal has the support of at least 75% of all the owners, calculated both in number and value in a formal voting process. The developer obviously has a conflict of interest in considering any such proposal and may therefore not vote against it.

A decision by a body corporate to sue the scheme developer is not one that should be taken lightly, as all litigation is expensive. And to support a legal claim the body corporate will need to have reliable evidence that the building works are sub-standard and that owners are prejudiced by the inadequate design or bad workmanship. Finally, the costs of litigation will have to be funded by owners, with the hope of recovering some or all of these costs in terms of a favourable court judgment.

But the inescapable truth is that the Act requires the body corporate to maintain and repair the buildings in the scheme and to fund these works by levying contributions on the owners of units. So if the body corporate is saddled with incomplete or inadequate buildings that the developer does not complete or repair, the owners will have to pay levies to cover the body corporate’s costs of doing so.

The body corporate has three years from becoming aware of problems to institute action against the developer. The trustees should protect the interests of owners, consider all the options available to them and consult an attorney as soon as any serious design or construction problems become apparent. ■

## EVALUATION OF THE SECTIONAL TITLE SURVIVAL MANUAL

Review by Brian Joss, news editor, Cape Cape Community Newspapers (CCN); Independent Newspapers (Cape). It appeared in the Southern Suburbs Tatler and other CCN titles (July 3, 2008).

### ■ Read of the week

**Paddocks Sectional Title Survival Manual,**  
**Graham Paddock**  
**Paddocks Publishing**  
**Review: Brian Joss**

Most books that deal with complicated subjects are usually filled with jargon that reads like this: ... "To any amount contemplated in sub-section (2), (b), (d) and (c) ... subject to sub-section 7 section 11 a or 52 b applies". And unless you're an accountant you will not understand what it's about.

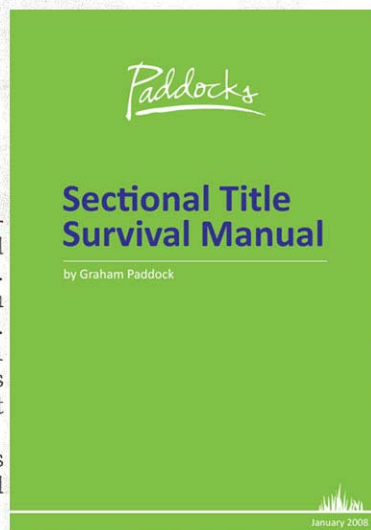
Thankfully, Graham Paddock's survival guide is free of any kind of legalese.

The closest he comes to lawyer talk is when he writes "Section 37 of the Act provides" ... but then Professor Paddock explains clearly what it means and you do not have to grab the nearest dictionary to look up any words you don't understand.

Although this slim survival manual has just 13 chapters, it covers, in detail, everything you ever wanted to know about Sectional Title Schemes but were afraid to ask.

Chapter 1 explains what a sectional title development is and there are sub-sections which deal with, among others, trustees; exclusive use areas; common property and special and unanimous resolutions, among others.

All of them are often the cause of trouble and strife as any trustee will tell you – and that's mainly because the owners don't know what rights they have or, more importantly, they have not read the



Act. Or they have, but don't understand it and that applies to some trustees and managing agents as well.

Other chapters cover residential tenant protection – who qualifies and who doesn't – what happens when you change from shareblock to sectional title and a lot more.

In the other chapters, Paddock discusses rules by which Sectional Title Schemes are controlled and managed.

The rules don't only apply to owners, they also apply to the trustees.

The conduct rules also explain clearly about the keeping of pets, also often the cause of controversy

at a Sectional Title Scheme. A useful addition is the chapter that contains extracts from the Act.

Graham Paddock is one of the country's leading experts on Sectional Title and what he doesn't know would probably fit on the head of a pin.

He is an adjunct professor at UCT's Faculty of Engineering and the Built Environment.

After reading this manual I am convinced that the sectional title industry needs an independent ombudsman who can help resolve disputes, which often cause unnecessary distress and heartache.

The survival guide should be compulsory reading for everyone who runs, owns or lives in a Sectional Title Scheme, and that includes managing agents who would be well advised to keep a copy handy on their desk – to read.

It will probably be the best investment you will make in a long time.

## EVALUATION OF THE SECTIONAL TITLE SURVIVAL MANUAL . . . continued

### Readers Response:

*"I can only congratulate Graham on producing a book that will become, I am sure, one of the most used reference books in the industry. All property port folio managers should be daily using this book as reference. It is easy to read and the reference to the sections of the Act, given at the bottom of the page on each subject, is a stroke of pure genius! The clear and concise description contained on each section is invaluable in finding your way through the legal jargon of the Act itself and makes even a lay person understand, quite clearly, the implication of the section. Congratulations and thanks for making a property port folio manager's life that much easier!"* - **Barbara Shingler, Managing Director, Ballito Estates**

*"A superb practical guide for the solutions of problems encountered in sectional titles!"*  
- **Professor C.G van der Merwe**

*"Paddocks Survival Manual is definitely the most popular form of reference in my company's library – easy to use, easy to understand, easy to find the right answers - and now, with its new green cover, easy on the eye too!"*

- **Greer Moore – Barnes, Managing Director, Bellbuoy Property Management**

*"The Paddocks Sectional Title Survival Manual is a must have resource for every trustee and managing agent. We often suggest to trustees that the body corporate purchase each of them (the trustees) a copy of the Sectional Title Survival Manual - the very least the body corporate can do for their voluntary service is to provide them with the sharpest tools to do their job! Anyone connected to sectional title, whether an owner, trustee or managing agent should own a copy of this essential reference manual"* - **Mike Addison, director of Addsure**

*"Authoritave yet in plain understandable English this book is an important reference for Trustees and Managing Agents. "*

- **Dr Gerhard Jooste, chairman of NAMA**



#### How to order:

1. Obtain an Order Form from Paddocks offices (021 674 7818) or via the Paddocks website.
  2. Complete the Order Form and fax your Order Form together with your proof of payment to Paddocks Offices on 021 671 2596.
  3. Your copy of the Sectional Title Survival Manual will be posted to you within 24 hours of receiving your order. *Courier options also available.*
- Contact Amy on 021 674 7818 or [amy@paddocks.co.za](mailto:amy@paddocks.co.za) if any queries.

## Q & A WITH THE PROFESSOR



By Prof.  
Graham Paddock

### Liability for damage arising from faulty foundations

**Q1.** Our development is built on clay ground. Each group of units is built on a concrete slab to absorb and minimise the effect of any ground movement. After some 11 years cracks in the walls appeared in some of the houses. These are not plaster cracks, in some instances daylight can be seen through them. My understanding is that the damage came from the foundation which is common property therefore the owner would have recourse to the body corporate for the cost of damages. This has been disputed on the basis that an owner bought a unit voetstoots and that the body corporate has no liability. For whose account would these repairs be supposing that the ground shift has now stopped or has been stabilised?

There is no subsidence insurance. In my view the ground shift is an act of God and the damage is not due to the body corporate's neglect or failure to maintain.

**A1.** One always starts by asking "Where did the original materials failure occur?"

In this case I presume the ground

(common property) gave way causing the foundation (some or all of it common property) to fail and as a result the walls (part common property and part section) have cracked.

Clearly the body corporate must carry out and pay for the repairs to the common property.

If an engineer says the crack in the wall of the section is the direct result of a failure of the common property, then the body corporate must pay for this repair on the basis of its statutory obligation to maintain and repair the common property and the fact that defects in the common property resulted in damage to the section.

The issue of 'voetstoots' does not apply at all in these circumstances, only to the contractual relationship between seller and buyer.

The body corporate is not only liable to repair and maintain where a deterioration in condition is due to its failure to maintain. Its statutory duty is to maintain and repair all the common property and thus to keep it in a serviceable condition, where necessary replacing broken or worn-out parts. Whether some damage is as a result of "an act of God" or not may be relevant to an insurance claim, but it is not relevant to the body corporate's statutory liability.

**Is the body corporate responsible to pay the costs of having unregistered extensions of sections sorted out?**

**Q2.** I have just sold a unit where an extension was done, but the sectional plan

was not redrawn. A few people did extensions and the managing agent never informed the trustees about the redrawing of the sectional plans. I don't want to hide this from the purchaser, but am I correct in saying that the body corporate would have to pay for the sectional plans as the managing agent never informed the trustees who gave the necessary permission? Everything else was done in the correct manner with all owners agreeing etc. The present owner (my seller) says it's unfair to charge only the owners who did extensions, as some of them wouldn't have done the extensions had they known about the additional cost involved.

**A2.** No, you are not correct in suggesting that the body corporate would have to pay the costs of the extension. An owner is obliged to follow the process set out in section 24 of the Act. And a subsequent owner cannot hold the body corporate responsible; s/he steps into the shoes of the previous owner and becomes legally responsible to fix the mess s/he inherited.

In my view the argument of the current seller does not hold water. The extension processes are, in terms of the Act, the responsibility of the relevant owners.

**Another question about unregistered section extensions.**

**Q3.** In my scheme three extensions of sections into the garden area were completed many years ago. The one has been duly approved by the S.G. and registered. A new ...to page 7

## Q & A WITH THE PROFESSOR ...continued

...from page 6 P.Q. Schedule was attached to the amended plans. It was approved in 1992 but registered in 1998.

The other two remain unregistered. I am not certain if approval was obtained from the body corporate, never mind the S.G.! The new P.Q. Schedule has never been implemented so the owner in effect has been subsidised all these years.

I am keen to implement the new schedule immediately and then tackle the registration of the other two sections. A comment by the managing agent has been that it wouldn't be fair and better to wait until the other two are registered.

I am loathe to wait as it has taken all these years for this to come to light after I visited the Deeds Office and had every scrap of information on the scheme printed out.

Trustees change and the whole matter could sink into oblivion once again.

I have pointed out that an agent could be accused of misrepresentation if the unit is sold without the extension having been registered but this doesn't seem to be of any importance to anyone else.

**A3.** You don't have the option to wait. As from 1998 when the amended participation quota schedule was registered the levies were due on that basis and if they have been incorrectly collected since then you need to address the situation now.

The two unregistered extensions may have been approved by special resolution under section 24 of the Act, in which case the owner is obliged to continue and get the sectional plans of extension registered, including the amended participation quota schedules. In this case I suggest

the owners be put on notice now and that the matter be pursued. Otherwise you will have another new owner claiming (incorrectly) that the BC should never have allowed him to have bought into this situation.

If there is no record of a body corporate special resolution authorising these extensions, one needs to start at the beginning of the process, and in this event it may make sense to include as part of the approval of the extension process that the owner pay additional amounts (quasi levies) as from the time the extension is usable and that no levy clearance will be issued until the sectional plan of extension is registered.

### Uncompleted AGM business

**Q4.** Our AGM was duly held and it was unanimously agreed that we did not approve the schedule of insurance replacement values as some sections were clearly incorrect. The new trustees were instructed to look into this.

Two weeks ago I was informed that the schedule of insurance has been implemented without changes and the new monthly costs added to my levy statement. What recourse do I have?

**A4.** Have a look at prescribed management rule 56. The approval of the schedule of replacement values for insurance purposes is business that must be done at the AGM, i.e. the decision cannot be made by trustees but has to be taken by owners in general meeting.

Of course the buildings must be insured

in the meantime and owners have to pay, but I suggest that the trustees be asked to convene a general meeting to complete the unfinished business of the AGM as soon as possible.

### Arbitration and Levy Collections

**Q5.** Can the PMR 71 Arbitration process be used for Levy Collections?

**A5.** As a result of the recent decision of the Supreme Court of Appeal in matter of the Body Corporate of Greenacres v Greenacres Unit 17CC, when a defaulting owner raises a dispute with the body corporate as a defence to a court action instituted to collect outstanding levies, the issue of the dispute must be referred to arbitration under PMR 71.

While schemes may consider private arbitration a more efficient method of collecting outstanding levies than litigation, PMR 71 was never intended to exclude the jurisdiction of the courts in debt collection procedures. Section 37(2) of the Act specifically refers to the use of the courts for the recovery of outstanding levies.

So PMR 71 is not designed for levy collections, but if, for example, an owner disputes that a levy was properly raised, or alleges that the levy debt has been extinguished by set off of an amount the body corporate owes him/her, the court case cannot continue and the dispute must be settled by way of arbitration. ■

## UPCOMING EVENTS

JULY	
Managing Agents and Insurance Seminar - Addsure, Port Elizabeth	25 July
Trustee Insurance Workshop - Addsure, Jeffreys Bay	26 July
AUGUST	
Trustee Training - Lumic Property Consultants, Johannesburg	2, 7 August
Trustee Insurance Workshop - Addsure, Cape Town	12 August
Managing Agents Insurance Workshop - Addsure, Cape Town	14 August
Registrations Close for UCT Sectional Title Specialist Realtor	15 August
UCT Sectional Title Specialist Realtor Course Starts	25 August
Sectional Title for Dummies Seminar - Connecta Realty, Durban	20 August

*Please contact Robyn on 021 674 7818 or [robyn@paddocks.co.za](mailto:robyn@paddocks.co.za) for more information regarding the above events or to submit an event.*

## ABOUT PADDOCKS

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning, Consulting, Development, Publishing,** and **Software** divisions.

Prof. Graham Paddock is the head of Paddocks, an authority on Sectional Title law and practice and an adjunct Professor at the University of Cape Town. He is the Project Manager and one of the lead consultants to the Department of Housing in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

### Learning

Together with the Universities

of Cape Town and Stellenbosch as well as the National Association of Managing Agents and other professional organisations, Paddocks Learning offers several sectional title certificate courses, seminars and conferences.

### Consulting

Graham Paddock leads the consulting division and is assisted by Judith van der Walt and Jennifer Paddock. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to vari-

ous levels of central and local government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveyancing services.

### Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

### Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and pub-

lishes a range of electronic and 'hard copy' sectional title publications by Graham and other authors which make Sectional Title expertise easily accessible to the South African population at large.

### Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see

[www.paddocks.co.za](http://www.paddocks.co.za) for more information ■